

IN THE UNITED STATES COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BEVERLY ROETHLEIN,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	NO. 02-CV-9507
	:	
DAWN M. SCHMIDT, ESQ., et al.,	:	
Defendants.	:	

ORDER

AND NOW, this day of February, 2003, upon consideration of (i) Plaintiff's Motion for Remand (Document No. 2, filed January 6, 2003); (ii) Defendants' Opposition to the Motion (Document No. 5, filed January 17, 2003); (iii) Plaintiff's Reply to the Opposition (Document No. 6, filed January 24, 2003); and (iv) Plaintiff's Supplemental Reply to the Opposition (Document No. 9, filed February 6, 2003), it is hereby **ORDERED** as follows.

Defendants removed this action, pursuant to 28 U.S.C. §§ 1331 and 1441(b), from the Court of Common Pleas of Philadelphia County, Pennsylvania, to the United States District Court for the Eastern District of Pennsylvania. A removal proceeding is proper if the recipient court would have had original jurisdiction had the plaintiff initially filed the complaint in that court. Franchise Tax Board v. Construction Laborers Vacation Trust, 461 U.S. 1, 13, 103 S. Ct. 2840, 2848, 77 L. Ed. 2d 420 (1983).

Federal district courts have "original jurisdiction over all civil actions arising under the Constitution, laws, or treaties of the United States," 28 U.S.C. § 1331, and the Plaintiff's "well-pleaded" complaint establishes if the cause of action "arises under" federal law. See Franchise Tax Board, 461 U.S. at 10 ("Whether a case is one arising under the Constitution or a law or

treaty of the United States, in the sense of the jurisdictional statute, . . . must be determined from what necessarily appears in the plaintiff's statement of his own claim in the bill or declaration") (citation omitted). Lastly, to successfully gain entrance to a federal district court via § 1331, plaintiff must not only advance some applicable federal law, but also must prove a private right of action to enforce the relied upon federal Constitution, law, or treaty.

We are guided by the face of the Plaintiff's Complaint. The Complaint asserts four claims for relief: (i) violations of the Pennsylvania Fair Credit Extension Uniformity Act, 73 P.S. § 2270, and the Consumer Protection Law, 73 P.S. § 201-1; (ii) violations of the Pennsylvania Loan Interest and Protection Law, 41 P.S. § 101; (iii) imposition of illegal penalties; and (iv) unjust enrichment. On the face of the Complaint, all counts arise under Pennsylvania state law.

Defendants claim that "an element, and an essential one," U.S. Express Line Ltd v. Higgins, 281 F.3d 383, 389 (3d Cir. 2002) (citation omitted), of Plaintiff's Pennsylvania Fair Credit Extension Uniformity Act count against Defendants necessarily includes an analysis and construction of a federal statute, the Fair Debt Collection Practices Act, 15 U.S.C. § 1681.¹

However, this is not the case. The Fair Debt Collection Practices Act, defines a "debt" as:

any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

15 U.S.C. § 1692a(5).

The Third Circuit, in Pollice v. National Tax Funding, 225 F.3d 379, 401 (3d Cir. 2000),

¹ 73 P.S. § 2270.4(a) states that any violation of the Fair Debt Collection Practices Act shall constitute a violation of the Pennsylvania Fair Credit Extension Uniformity Act .

expounded on this statutory definition and held that a “debt” under the Fair Debt Collection Practices Act does not include property taxes.

The alleged debt that Defendants were attempting to collect from Plaintiff was based on delinquent real estate taxes, and consistent with the Third Circuit’s construction of “debt” in Pollice, the Fair Debt Collection Practices Act is inapposite in this factual situation. Furthermore, on the face of Plaintiff’s Complaint, the remaining three counts against the Defendants arise solely under Pennsylvania state law. Accordingly, pursuant to 28 U.S.C. § 1447(c), it is hereby **ORDERED** that this case is **REMANDED**. The Clerk of Court is directed to transfer this matter, and all relevant pleadings and submissions, to the Court of Common Pleas of Philadelphia County.

It is further **ORDERED** that Plaintiff’s request for attorneys’ fees pursuant to 28 U.S.C. § 1447(c) is hereby **DENIED**, as Plaintiff’s Complaint is laden with references to the Fair Debt Collections Practices Act, even though Plaintiff now concedes that the Act is inapplicable. Under these circumstances, it was arguably reasonable for Defendants to assume that removal was proper. This is a final judgment and the Clerk of Court is directed to statistically close this matter.

BY THE COURT:

Legrome D. Davis, U.S.D.J.